



TEXAS  
WORKERS' COMPENSATION COMMISSION  
SOUTHFIELD BUILDING, 4000 SOUTH IH-35, AUSTIN, TEXAS 78704  
(512) 448-7900

ID# 12246  
mjs

April 16, 1991

The Honorable Dan Morales  
Attorney General of the  
State of Texas  
Supreme Court Building  
Austin, Texas 78701

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Opinion Committee

Dear Mr. Morales:

I seek your opinion on the power of the executive director to make rules for administration of the Texas Workers' Compensation Law as it affects injuries that occurred prior to January 1, 1991.

I ask that this request be put on a rush basis, as the commission is currently promulgating rules, most especially in the area of medical fees and guidelines, that are intended to apply to all injuries.

Specifically, my questions are:

- 1) For the period from April 1, 1990 through December 31 1990, was the executive director delegated power to promulgate rules for purposes of administering claims for compensable injuries under the old Workers' Compensation Act, Articles 8306 and 8307?
- 2) If so, did this delegation extend beyond the "transition period" contemplated in Article 8308, §17.12?

Statutory Background:

The new Texas Workers' Compensation Act, Article 8308 - 1.01 et seq. (Supp. 1991) established the Texas Workers' Compensation Commission in place of the Industrial Accident Board. The three-person full-time board was replaced by a six-person part-time commission. Article 8308 - 2.01(b). The executive director of the commission assumed, under the new law, responsibility for day-to-day operation of the commission, Article 8308 - 2.11(b), as well as certain powers previously within the purview of the board. See Article 8308 - 2.11(c).

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The previous workers' compensation laws were repealed in §16.01 of the bill (S.B.1, 71st Legislature, Second Called Session) that also included the Texas Workers' Compensation Act. This repealer took effect January 1, 1991, Article 8308, §17.18(a). In the body of this request, the repealed provisions will be referred to as "old law".

The pertinent sections of the bill that give rise to this request for opinion are found in Article 8308, §17.12 and §17.18, set forth below:

SECTION 17.12. COMMISSION AUTHORITY DURING TRANSITION.

- (a) The Texas Workers' Compensation Commission created under this Act shall begin immediately to adopt rules to implement this Act. The rules adopted under this section may not have an effective date before January 1, 1991.
- (b) The commission shall delegate appropriate powers and duties to the executive director to administer the Crime Victim's Compensation Act (Article 8309 - 1, Vernon's Texas Civil Statutes) and the workers' compensation law in effect prior to the effective date of this Act.
- (c) The State Board of Insurance and the commission shall develop a plan to provide for the orderly transfer to the State Board of Insurance by September 1, 1991, of coverage and cancellation notices required to be filed with the commission by §§3.22, 3.25, 3.26, and 3.28 of this Act.

SECTION 17.18. EFFECTIVE DATE.

- (a) This Act takes effect January 1, 1991, except as provided in Subsection (b) of this section.
- (b) Article 2, except §2.14, and §§17.01, 17.10, 17.12, 17.13, and 17.14 take effect April 1, 1990. Articles 9 and 10 take effect June 1, 1991. Chapter D of Article 3 takes effect January 1, 1993. Chapter C of Article 6 takes effect January 1, 1992.
- (c) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act.

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- (d) The Texas Workers' Compensation Commission created under this Act shall process claims for injuries occurring before January 1, 1991, in accordance with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

Note that §17.12 was effective April 1, 1990; §17.18 was effective January 1, 1991. Thus, although repealed, old law stays in effect to allow the agency to process claims on injuries that occurred prior to January 1, 1991, under the supervision of the executive director.

Article 8308 - 1.01 of the new statute states that "Article 1 through 11 of this Act may be cited as the Texas Workers' Compensation Act."

Section 2.09 spells out the duties of the six commissioners. Section 2.09(a) states: "The commission shall adopt rules as necessary for the implementation and enforcement of this Act." (emphasis added) Section 2.09(1) states that this right and duty may not be delegated.

Sections 2.10 and 2.11 describe the powers and duties of the executive director. Section 2.10(a) states:

"The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rule-making and other rights, powers, and duties specifically reserved by this Act to members of the commission."

These provisions from Article 2 were effective April 1, 1990. (See Article 8308 - 17.18(b).)

Read together with Art. 8308 - 17.12 and 8308 - 17.18 of the Act, these provisions yield the following interpretations:

- (1) The commission expressly could not make rules with an effective date prior to January 1, 1991; therefore, any "old law" rules that needed to be amended or promulgated between April 1, 1990 and December 31, 1990 could not be done by the commission;
- (2) The delegation to the executive director of appropriate powers and duties to administer "old law" is mandatory under §17.12(b). The commission in fact made such a delegation at its first meeting in April 1990. An "appropriate power" of administering a law is the power to promulgate rules;

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- (3) The "old law", notwithstanding the repealer in §16.01, remains in effect for processing claims for injuries that occurred prior to January 1, 1991. The executive director continues to administer "old law" beyond the transition period, because the changes made by the Act apply only to injuries on or after January 1, 1991.

You should further note that §15.41 of the bill, which amends the Crime Victims Compensation Act, states:

"Any powers, duties, and responsibilities given to the board in this Act are delegated to the executive director of the Texas Workers' Compensation Commission."

This is significant, because §17.12(b) equates administration by the executive director of the "old law", with his administration of the Crime Victims' Compensation Act.

We appreciate your analysis of the rule-making duties of the executive director and the commissioners for old-law claims for the period from April 1, 1990 through December 31, 1990 and the period after January 1, 1991.

Because the need to process "old law" claims continues, we ask that you expedite your answer.

Very truly yours,

  
George E. Chapman  
Executive Director

GEC/jbp



TEXAS  
WORKERS' COMPENSATION COMMISSION  
SOUTHFIELD BUILDING, 4000 SOUTH IH-35, AUSTIN, TEXAS 78704  
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April 17, 1991

Ms. Madeleine Johnson  
Chief, Opinions Committee  
Attorney General  
Post Office Box 12548  
Austin, Texas 78711

Dear Ms. Johnson:

For your information, two groups will probably be interested in the issues raised by the enclosed opinion request. These are the Texas Medical Association and Texas Hospital Association.

Thank you for your prompt attention to this.

Very truly yours,

*Susan M. Kelley*  
Susan M. Kelley  
General Counsel

SMK/jbp